IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO. 26 OF 2002.

Shri Sitaram Damodar Sinai
Dessai, r/at Almeida Residency,
Altinho, Mapusa, Goa. ... Appellant.

Versus

1. Shri Purushottam Sitaram
   Sinai Dessai.
2. Smt. Ramabai Purushottam
   S. Dessai,
   Mauswada, Pernem, Goa.
3. Shri Damodar Sitaram Sinai
   Dessai,
4. Smt. Jayantibai Damodar Sinai
   Dessai,
   both r/of Almeida Residency,
   Altinho, Mapusa, Goa.
5. The Archdiocese of Goa & Daman,
   Patriarchal Palace, Altinho,
   Panaji, Goa. ... Respondents.

Mr. S.K. Kakodkar, Senior Advocate with Mr. Joel J. D'Souza, Advocate for the Appellant.

Mr. J.P. Mulgaonkar, Advocate for the Respondents 1 and 2.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. J. Godinho, Advocate for the Respondent No. 5.

Coram: P.V. HARDAS, J.

Date: 15th March 2002.

ORAL JUDGMENT.

This Court while issuing notice before admission on 14th February 2002 had put the parties on notice that the First Appeal would be finally disposed of. The First Appeal is, therefore, admitted and by consent of parties, is taken up for final hearing dispensing with the preparation of the paper book for the reason that the plaint of the present appellant had

been rejected by the learned IInd Additional Civil Judge, Senior Division, Mapusa, by his Order dated 6th August 2001, on the basis of an application which was filed under Order VII, Rule 11 of the Code of Civil Procedure, by holding that the plaint did not disclose a cause of action. The appellant being aggrieved by the Order of the IInd Additional Civil Judge, Senior Division, Mapusa in Special Civil Suit No. 69/2000/IInd SR, has filed the present appeal.

2. The above referred Special Civil Suit came to be filed by the plaintiff on the basis of a right which was carved out on the basis of paragraph 8 of the plaint. Paragraph 8 of the plaint refers to a Gift Deed dated 17th April 1957 executed by Sitaram G.S. Dessai. Thereafter a Deed of Rectification was executed on 8th May 1969. It is needless to refer to the recitals of the Gift Deed and the Deed of Rectification but suffice to state that the import of these two documents was that in the event of death of defendants 1 and 3, the property gifted to defendants 1 and 3 would stand gifted back to the plaintiff the present appellant. This gift to the plaintiff would come into effect upon the death of the defendants 1 and 3. The plaint further discloses that the defendants 1 and 3 executed the Sale Deed on 16th June 1978 in favour of defendant no. 5. The plaint further

discloses that on learning about the execution of the Sale Deed, the plaintiff issued a notice on 27th October 2000 to the defendants. Paragraph 17 of the plaint discloses the cause of action which arose in October 2000 for the filing of the suit.

3. The present respondents filed an application under Order VII, Rule 11 of the Code of Civil Procedure, Exhibit 6, before the learned trial Court contending that the plaint had not disclosed a cause of action and the suit was barred on the ground of limitation. The learned trial Judge, while allowing the said application, repelled the contentions raised by the present appellant/plaintiff in his reply to the aforesaid application and held at paragraph 6 of the impugned Judgment that the gift in favour of the plaintiff would come into force only on the death of the defendants 1 and 3 and since the defendants 1 and 3 were alive and parties to the present proceedings, no cause of action arose in favour of the plaintiff.

4. In a recent decision of the Supreme Court in **Rajasthan High Court Advocates Association v. Union of India**, A.I.R. 2001 S.C. 416, the Supreme Court while interpreting the 'cause of action' has stated as under:-

"The expression 'cause of action'

> has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances of forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in 'cause of action'."

5. According to me the plaint does disclose the cause of action. Paragraph 8 of the plaint carved out the right of the plaintiff and the further paragraphs in the plaint complain of the infraction of the right of the plaintiff by the acts of the defendants 1 and 3 in executing the Sale Deed. The suit of the plaintiff has been filed for cancellation of the Sale Deed in favour of defendant no. 5 by defendants 1 and 3. The plaintiff makes detail averments to the rights of the plaintiff and the infraction thereof and, therefore, according to me, the plaint does disclose a cause of action. The learned trial Court, according to me, was not right in scuttling the proceedings by holding that the plaint does not disclose cause of action. The trial Court has not dealt with the question of limitation though it was raised. Therefore, there is

no necessity for me to advert to that as Mr. Mulgaonkar, the learned counsel appearing for the respondents, has also rightly not raised that question.

6. In view of my discussion above, First Appeal is allowed with no order as to costs. The Judgment and Decree of the learned IInd Additional Civil Judge, Senior Division, Mapusa in Special Civil Suit No. 69/2000/IInd SR dated 6th August 2001 rejecting the plaint is hereby quashed and set aside. The suit is restored to file. The learned trial Court shall proceed to hear and decide the Civil Suit in accordance with law.

(P.V. HARDAS)
JUDGE.

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